

BEFORE THE

Federal Communications Commission

In the Matter of:)
)
THE FLORIDA CHANNEL)
An Internet Protocol-Delivered Video)
Programming Service)
)
Petition for Declaratory Ruling or Partial Exemption)
Pursuant to §§1.02 and 79.4(d) of the Commission's Rules)

To: Chief, Media Bureau

PETITION FOR DECLARATORY RULING OR PARTIAL EXEMPTION
PURSUANT TO §§1.2 AND 79.4(d) OF THE RULES

The Florida Channel ("TFC"), an Internet protocol-delivered video programming service, by its attorneys, pursuant to Section §§1.2 and 79.4(d) of the Commission's Rules, hereby petitions for declaratory ruling or partial exemption from the closed captioning requirements of Section 79.4 of the Rules adopted in *Closed Captioning of Internet Protocol-Delivered Programming*, 27 FCC Rcd 787 (2012). In support whereof, the following is shown: 1/

I. INTRODUCTION

1. TFC is a video programming service operated by Florida State University's Station WFSU-TV, Tallahassee, Florida. But, most importantly, the programming service is completely funded by the Florida Legislature. TFC is offered free of charge to public broadcasters, PEG, and cable operators throughout the State of Florida as a public service. The

¹ The facts stated in this Petition are supported by the attached Declaration of Ms. Beth Switzer, Executive Director of TFC.

coverage that TFC provides is offered nowhere else in the state. Its programming feed is utilized by citizens, news organizations, and those directly (and indirectly) involved in the legislative process and operations of state government.

2. TFC produces and airs year-round coverage of a wide variety of state government “gavel-to-gavel” events, meetings and sessions as well as studio-based and produced/edited programs and program elements. TFC feeds 24 hours of programming, 7 days a week. Generally speaking, it produces one new 12-hour block daily that begins at 6 a.m. and runs until 6 p.m. and then repeats from 6 p.m. until 6 a.m. Each new block is made up of live/live-to-tape/near-live and pre-recorded programs and programming elements.

3. The programming produced by TFC is funded entirely through grants and contracts appropriated and approved annually during the Florida state legislative session. While, as an operational matter, TFC is a program service of NCE Station WFSU-TV, which is a “department” of Florida State University, TFC receives no funding from WFSU-TV or from the University. Employees exclusive to WFSU-TV do not work at TFC. In fact, by way of example, if the University mandates personnel raises for University employees, TFC does not receive funding from the University to pay for the mandated increases. If the raises are to be granted, TFC has to fund the increase with existing contract resources. From the University’s perspective, TFC’s personnel are “time-limited” employees (limited to the length and terms of the contract), who are obligated to perform and complete their Scope of Work within finite resources. Without the specific, fixed legislative funding for its programming through grants and contracts, TFC would not exist.

4. On average, TFC produces 2500 hours of original programming annually. Specifically, during its 2011-2012 production year (July 1 – June 30), it produced the following programming categories and hours of state government coverage:

A	Legislature	1,358.75 hrs.
B	Governor and Cabinet	120.5 hrs.
C	Supreme Court	221.5 hrs.
D	Executive Branch Agencies	347 hrs.
E	Press Availabilities/Conferences	61 hrs.
F	Interstitial Programming (much of which is edited, graphics-based and under 10 minutes in length)	163.25 hrs.
G	Packaged/Edited Programs (<i>Capitol Update, Florida Face to Face, Florida Crossroads and News Brief</i>)	232.5 hrs.
	TOTAL HOURS July 1, 2011 – June 30, 2012	2504.5 hrs.

II. REQUEST FOR DECLARATORY RULING

5. Under new Section 79.4(a)(1) of the Rules, the closed captioning requirement for Internet Protocol-delivered TV programming applies only to “Programming...generally considered comparable to programming provided by a television broadcast station”. TFC maintains that the majority of its programming (Categories A-E in the table in Paragraph 4 above) is NOT “generally comparable to programming provided by a television broadcast station,” because it is long-format, gavel-to-gavel coverage of Florida state legislative, executive and judicial proceedings that is captured live and unedited on a daily basis. Thus, this programming has no comparable counterpart in daily television broadcast station programming.^{2/} Indeed, most of TFC’s programming is considered “outtakes” by television broadcast stations because it is footage that these stations will sort through - and take only short pieces - for use as b-roll or sound bites, in their own news programming.

6. On the other hand, the only TFC programs that can be considered “generally comparable to programming provided by a television broadcast station” are those programs listed in Category G: (*Capitol Update, News Brief, Florida Face to Face and Florida Crossroads*). Of these programs,

² It is analogous to the type of gavel-to-gavel news coverage provided by C-SPAN on cable television systems, but, most importantly, C-SPAN is not “programming provided by a television broadcast station”. C-SPAN is a cable program service – not a television broadcast station.

Capitol Update, *News Brief*, and *Florida Face to Face* are all produced “live or near live”. TFC respectfully requests a declaratory ruling that its programming in Categories A through E is outside of the scope of Section 79.4 of the Rules and is not subject to closed captioning.

III. REQUEST FOR PARTIAL EXEMPTION FROM SECTION 79.4

7. In the event that the Commission does not conclude that Categories A through E of its programming is outside of the scope of Section 79.4 of the Rules, TFC respectfully requests a partial exemption from the Rule for that programming, pursuant to Section 79.4(d), because of the extreme economic burden that compliance would require.

8. The starting point for TFC’s request is its current operating budget as authorized by the State Legislature -- \$3,544,478. Currently, that funding is allocated as follows:

	Expense Categories	
B-1	Administrative Expenses (insurance, postage/freight, office supplies, parking, printing, etc...)	\$80,300
B-2	TV Closed Captioning for 24/7 feed (services, hardware and personnel, etc...)	\$340,862
B-3	IP Closed Captioning for 24/7 stream of televised feed and archived “produced” programs (services, hardware and personnel, etc...)	\$39,600
B-4	Distribution Services (fiber, satellite, maintenance and personnel, etc...)	\$212,098
B-5	Equipment (replacement, repair, etc...)	\$52,593
B-6	Production Services (news access fees, operation expenses for remote events, studio repair, equipment rental, etc...)	\$33,000
B-7	Production Supplies (studio/set supplies, studio replacement parts, engineering supplies, production tools, tape stock, production software, computers, etc...)	\$89,000
B-8	Professional Services (training/consultants, software licensing/technical support, misc. contract services, etc...)	\$133,000
B-9	Travel (remote events/special events coverage, Florida Crossroads, Capitol Update, meetings, training, etc...)	\$129,000
B-10	Administrative and Technical Support Salaries (part-time support functions such as accounting, IT, payroll etc...)	\$187,644
B-11	Production Salaries (reporters, producers, news managers, master control, tapes, web/archiving, captioning support, engineering/IT, remote events crews, videographers, graphics, editing, human resources, management/team leaders, etc...)	\$2,247,381
	Total Budget	\$3,544,478

Item B-2 (\$340,862) represents current closed captioning expenses under Section 79.1 of the Rules, and Item B-3 (\$39,600) represents current closed captioning expenses under Section 79.4 of the Rules. In other words, TFC is “ahead of schedule” in complying with Section 79.4 as to Categories F and G of its programs (*Capitol Update*, *News Brief* and *Florida Face to Face*), because they are produced “live or near-live” and are not required to be captioned in TFC’s archives until March 30, 2013.

9. According to TFC’s current captioning provider (Media Captioning Services), the cost associated with creating text files for separate long-form meetings is expensive because they have to use multiple, sequential captioners (with some overlap). They have quoted an hourly cost of \$250 for re-captioning the files to be archived (compared to \$72 an hour for the live feed). It is important to note that the \$250 hourly fee only covers the re-captioning of the files. It does not cover the costs associated with the additional personnel TFC would have to hire to prepare and trim the files for re-captioning or the contract costs of syncing the text files with video for archiving. Thus, TFC estimates that, at a minimum, it will cost it an additional \$690,000 annually to caption its archived long-form, gavel-to-gavel files with its current provider. To do this would mean that it would have to spend more than 30% of its total budget on captioning, instead of the current 11%. TFC submits that such an additional expense would be extremely economically burdensome and would have a dramatic, negative impact on its ability to function. To increase the total captioning budget from \$380,462 to \$1,070,462 would be devastating to TFC’s employees, overall operations and coverage.

10. Importantly, TFC is not asking for an exemption from all captioning. Rather, TFC is undertaking to caption its IP archives of all produced (packaged) video programming (all the programming that “summarizes/reports on” its event coverage): *Capitol Update*, *News Brief*, *Florida Face to Face*, *Florida Crossroads* and its “explainer interstitials” (i.e., interstitial pieces on

the proposed amendments to the Florida Constitution and other explainer pieces that are *not required* to be captioned). It is important that TFC continues to be able to produce an average of 2500 hours of programming annually - within budget. Therefore, TFC respectfully requests a partial exemption from Section 79.4: exempting TFC from captioning its IP archives of the long-form, full event, “gavel-to-gavel” coverage that it voluntarily captions for TV – programming that is NOT “generally comparable to programming provided by a television broadcast station.”

11. Specifically addressing the four exemption criteria stated in Section 79.4(d)(2):

(i) The nature and cost of the closed captions for programming:

While the technology is certainly being worked on and improved, there is currently nothing available on the market to caption live, multi-voiced programming or events without incurring significant expense. TFC spends 11% of its total funding on closed captioning (B-2 and B-3) and it is estimated that to caption all archived long-form, gavel-to-gavel video files, it will cost an additional \$690,000 annually (at minimum). This would increase the percentage of TFC’s total budget spent on captioning from 11% to (at a minimum) 30% and is economically burdensome.

(ii) The impact on the operation of the video programming provider or owner:

The additional funding required to caption TFC’s programming delivered by IP has to be found in its existing budget. It has already made substantial cuts to cover costs of captioning its live 24/7 stream and its “produced” programming. Any additional funding for captioning all video files on the web would have to come from funding used for critical areas of its budget, which would result in:

- A dramatic reduction in staff
- A dramatic reduction in coverage offered (and available to all citizens)
- Reconsideration of how programming is offered/available (Internet only) -- which would disenfranchise a significant portion of the population
- Dramatically reduced transparency in Florida’s state government.

These results would serve neither the public interest nor the organization while negatively impacting both.

(iii) The financial resources of the video programming provider or owner:

TFC operates on a fixed budget: both funding and the terms of the grants/contract are approved annually as part of the legislative process. TFC is not able to raise or request additional resources, once an allocation has been made and a budget is established for a fiscal year. Currently, TFC is operating under FY 2012-13 legislation, and the LBR (Legislative Budget Request) for FY 2013-14 has already been submitted. The 2013-14 LBR is a maintenance budget and does not include any increase in funding for closed captioning. If required to caption all long-form video files in its archives by March 30, 2013 (which is the middle of the Florida legislative session), TFC would have to:

- Reduce coverage in the middle of session -- cut the number of events/meetings it covers, or
- Withhold all long-form events/committee meetings/sessions from its web archives.

Neither action serves the public interest.

(iv) The type of operations of the video programming provider or owner:

TFC is not a “for-profit” television broadcast station or program provider. While it is true that it is operated by a public broadcasting station that is licensed to Florida State University, it does not receive any funding from the station or the University. TFC operates as a public service with funding provided by the Florida Legislature to serve the citizens of the state, offering access to state government offered nowhere else. Without this funding, and in the absence of the Legislature’s contract, TFC would not exist. (And under the state’s “closed” contract, there is no mechanism for TFC to raise money to recover any reductions in funding, supplement existing funding, or cover any additional expenses; it must balance its budget with existing funds as allocated.)

12. Addressing the additional issue raised in Section 79.4(d)(3):

TFC has reviewed whether it would be financially feasible to post text files based on “uncorrected captioning files” for the long-form, gavel-to-gavel meetings that are part of its LIVE 24/7 feed and archived on its website. The hourly rate that TFC was quoted by its existing captioning vendor was \$170 an hour for these files. Thus, this alternative would also be “economically burdensome” at this time.

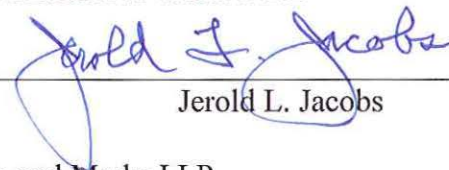
IV. CONCLUSION

WHEREFORE, in light of the foregoing, TFC respectfully requests that the Commission should either grant the requested declaratory ruling or grant TFC a partial exemption of the closed captioning requirements of Section 79.4 of the Rules.

Respectfully submitted,

THE FLORIDA CHANNEL

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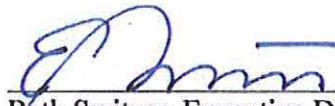
Dated: November 7, 2012

DECLARATION

I, Beth Switzer, Executive Director of The Florida Channel, hereby declare, under penalty of perjury, that I have read the attached "Petition for Declaratory Ruling or Partial Exemption Pursuant to §§1.2 and 79.4(d) of the Rules" and that, to the best of my knowledge, information and belief after reasonable inquiry, the facts and information in it are well grounded in fact and are true and correct; that the arguments made in it are warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that the pleading is not interposed for any improper purpose. The Petition, facts, and information therein are based upon a detailed report that I prepared on this subject on October 24, 2012, as a result of my own research, personal knowledge, and experience.

Executed on

November 2, 2012


Beth Switzer, Executive Director
The Florida Channel